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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

9 Attorneys for United States of America

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,) CASE NO. 4:21-mj-70377 MAG
14 Plaintiff,)
15 v.)
16 NORBETO TERRIQUEZ HERNANDEZ,) MEMORANDUM IN SUPPORT OF THE UNITED
17 Defendant.) STATES'S MOTION FOR DETENTION
18)
19)
20)
21) Date: March 1, 2021
22) Time: 1:00 p.m.
23) Court: Honorable Susan van Keulen
24)
25)
26)
27)
28)

On the evening of February 26, 2021, Norbeto Terriquez Hernandez (hereinafter "the defendant"), the sole occupant and driver of a vehicle, possessed in the trunk of the car approximately 60 bags of suspected methamphetamine, weighing an approximate total of total of 133 lbs with an approximate value \$266,000 to \$399,000. Given the distribution quantity of methamphetamine, the Court should detain the defendant pending trial.

BACKGROUND

I. OFFENSE CONDUCT

On or about February 26, 2021, a California Highway Patrol (CHP) officer executed a traffic stop along westbound Highway 580 of a white 2011 Chevy truck with a camper shell (hereafter, “the Chevy”). The CHP officer conducted the stop after identifying numerous suspected traffic violations, including exceeding a speed of 70 mph on a highway in violation of California Vehicle Code 22356(b). The traffic stop occurred near the Grant Line Exit on westbound Highway 580 after the freeway splits from Highway 205.

The CHP officer activated his emergency lights to alert the driver of the Chevy to his presence. The driver of the Chevy yielded at or near the above-referenced highway exit. Soon thereafter, the CHP officer exited his vehicle and contacted the driver. The driver was the sole occupant of the vehicle and was later identified as Norbeto Terriquez Hernandez. The defendant was the registered owner of the Chevy. In connection with the traffic stop, a second CHP cover unit arrived to assist the primary officer. The primary officer investigated the suspected traffic violations and ran the defendant's driver's license and vehicle registration. The primary officer also prepared a citation for three vehicle code violations, including speeding. During this time, the secondary officer used a K-9, named Apis, to patrol the perimeter of the Chevy. K-9 Apis alerted to the vehicle in a manner consistent with identifying the presence of a controlled substance.

After the K-9 Apis alerted, officers asked the defendant for consent to search the Chevy. The defendant provided consent. CHP officers searched the vehicle and discovered numerous boxes inside the trunk. Inside the boxes, the officers discovered white crystalline substances contained within Ziplock-style plastic bags. Based on the CHP's officers' training and experience, as well as the K-9 alert, they suspected the bags contained a controlled substance, namely crystal methamphetamine. The CHP officers placed the defendant under arrest and transported him to a nearby CHP station. Soon thereafter, DEA agents arrived to interview the defendant and transported the defendant to the DEA's Office in Oakland, California.

1 Later, DEA agents conducted a presumptive field test on the contents of one of the seized
2 Ziplock bags. The substance tested positive for the presence of methamphetamine. DEA agents also
3 counted and weighed the Ziplock bags. They counted approximately 60 bags that appeared to contain
4 roughly the same amount in each bag. Each bag weighs approximately one kilogram/2.2 pounds for a
5 total weight of approximately 60 kilograms/133 pounds. Below is a photograph of the seized bags of
6 suspected methamphetamine:



17 In addition, as is outlined in the complaint, approximately 60 kilograms of a methamphetamine is
18 consistent with distribution-level quantities of the controlled substance, and crystal methamphetamine
19 sells for approximately \$2,000 to \$3,000 per pound in the Bay Area. Here, the defendant possessed
20 approximately 133 pounds of suspected methamphetamine. And, the defendant's possession of these
21 high quantities, as is stated in the complaint, is consistent with his serving as a trusted member of a
22 larger drug trafficking network. Therefore, the defendant was likely entrusted by other members of his
23 drug trafficking network to transport and/or distribute contraband valued around \$266,000 to \$399,000.

24 On February 26, 2021, the defendant was charged, via complaint, with one count of violating
25 Title 21, United States Code, Section 841(a)(1), (b)(1)(B)(vii) (Possession with Intent to Distribute a
26 Controlled Substance).

1 **II. CRIMINAL HISTORY**

2 The defendant does not have any criminal convictions.

3 **ARGUMENT**4 **I. LEGAL STANDARDS**

5 The Bail Reform Act of 1984 permits pretrial detention of a defendant without bail where “no
 6 condition or combination of conditions will reasonably assure the appearance of the person as required
 7 and the safety of any other person and the community.” 18 U.S.C. § 3142(e)(1). Detention is
 8 appropriate where a defendant is either a danger to the community or a flight risk; it is not necessary to
 9 prove both. *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). A finding that a defendant
 10 is a danger to the community must be supported by clear and convincing evidence. 18 U.S.C.
 11 § 3142(f)(2)(B). A finding that a defendant is a flight risk need only be supported by a preponderance of
 12 the evidence. *Motamedi*, 767 F.2d at 1406. “[T]he Bail Reform Act mandates an [1] individualized
 13 evaluation [2] guided by the factors articulated in § 3142(g).” See *United States v. Diaz-Hernandez*, 943
 14 F.3d 1196, 1199 (9th Cir. 2019). Categorical grants or denials of bail, not tethered to an individualized
 15 determination, are impermissible. *Id.* Consideration of factors outside the articulated factors set forth in
 16 Section 3142 is also disfavored. *Id.*

17 The Court must consider four factors in determining whether the pretrial detention standard is
 18 met: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the
 19 defendant; (3) the history and characteristics of the defendant, including the defendant’s character,
 20 physical and mental condition, family and community ties, past conduct, history relating to drug or
 21 alcohol abuse, criminal history, and record concerning appearance at court proceedings, as well as
 22 whether the crime was committed while the defendant was on probation or parole; and (4) the nature and
 23 seriousness of the danger to any person or to the community that would be posed by the defendant’s
 24 release. 18 U.S.C. § 3142(g); *United States v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986).

1 **II. THE DEFENDANT IS BOTH A DANGER TO THE COMMUNITY AND A FLIGHT**
 2 **RISK**

3

4 The nature and circumstances of the offenses charged demonstrate the danger that the defendant
 5 poses to the community, under 18 USC §§ 3142(g)(1) and (4). The defendant is charged with conspiracy
 6 to distribute heroin, cocaine, and 50 grams or more of a mixture or substance containing
 7 methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(B)(viii). The danger posed to
 8 the community by drug offenses is well-established. *See, e.g., United States v. Zaragoza*, 2008 WL
 9 686825, at *3 (N.D. Cal. Mar. 11, 2008) (Spero, J.) (“In assessing danger, physical violence is not the
 10 only form of danger contemplated by the statute. Danger to the community can be in the form of
 11 continued narcotics activity or even encompass pecuniary or economic harm.”).

12

13 As this Court is aware, trafficking in narcotics harms not only those involved in the transactions
 14 but the entire community used as a marketplace for the drug trade. Methamphetamine is a potent and
 15 addictive drug with terrible psychological, medical, and social consequences. Nat'l Inst. on Drug
 16 Abuse, “Methamphetamine Abuse and Addiction,” Nat'l Inst. of Heath Pub. 13-4210 (rev. Sept. 2013)
 17 at 1.¹ Methamphetamine can cause memory loss, cardiovascular damage, malnutrition, aggression, and
 18 psychotic behavior. *Id.* “Beyond its devastating effects on individual health, methamphetamine abuse
 19 threatens whole communities, causing new waves of crime, unemployment, child neglect or abuse and
 20 other social ills,” including increased transmission of infectious diseases, such as hepatitis and
 HIV/AIDS. *Id.*

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22 According to a recent study by the City and County of San Francisco’s Methamphetamine Task
 23 Force, the devastating effects of methamphetamine trafficking are a serious local problem in the Bay
 24 Area. In its 2019 report, this task force estimated that thirty-nine percent of the estimated 24,500 people
 25 who inject drugs in San Francisco report using methamphetamine.² Deaths caused by

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27 ¹ This report is available at <https://www.drugabuse.gov/publications/research-reports/methamphetamine/letter-director>, and the tabs associated with it (last accessed Sept. 13, 2020).

28 ² All data described in this paragraph can be found in this report, which is available at https://www.sfdph.org/dph/files/MethTaskForce/Meth%20Task%20Force%20Final%20Report_FULL.pdf (last visited Sept. 13, 2020). The United States has not located comparable data for Concord, CA.

1 methamphetamine overdose rose from 1.8 to 14.6 per 100,000 people between 2008-2018, an increase
 2 of 711%. Among decedents experiencing homelessness, methamphetamine was the most commonly
 3 present substance (47%). Methamphetamine use was also prevalent among those individuals in need of
 4 emergency psychiatric care (47%), and among those with at least eight prior psychiatric holds, nearly 9
 5 in 10 reported using exclusively methamphetamine (89.1%). In 2019, methamphetamine was the most
 6 frequently involved substance in all drug arrests in San Francisco, and it is the second most used
 7 substance as reported by individuals in San Francisco's jails.

8 The defendant's methamphetamine trafficking exploits those addicted to the drug. Exploiting
 9 others through their addiction to methamphetamine harms not just those individuals but the entire
 10 community. The detention of this defendant will protect the community from this offense conduct – a
 11 dangerous and volatile form of criminal profiteering that puts the entire community at risk of harm.

12 In terms of the weight of the evidence, under § 3142(g)(2), this factor also favors detention
 13 because this is a strong case for the government. The methamphetamine was found in the trunk of the
 14 car the defendant was driving, and he was the sole occupant. The DEA agents counted approximately 60
 15 bags total weight of approximately 60 kilograms/133 pounds. As is outlined in the complaint, the
 16 defendant was likely entrusted by other members of his drug trafficking network to transport and/or
 17 distribute contraband valued around \$266,000 to \$399,000.
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19 While this factor is deemed the least important by case law, courts are still “require[d]” to
 20 consider it, and it can help establish dangerousness. *United States v. Hir*, 517 F.3d 1081, 1090 (9th Cir.
 21 2008) (finding that “the weight of the evidence clearly and convincingly establishe[d]” a likelihood that
 22 the defendant would pose a danger if released). Likewise, evidence of the defendant’s guilt “makes it
 23 more likely that he will flee,” particularly in light of the term of imprisonment that the defendant
 24 potentially faces here. *United States v. Gebro*, 948 F.2d 1118, 1122 (9th Cir. 1991). Specifically, the
 25 complaint charges that the defendant possessed with the intent to distribute 50 grams or more of a
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 27
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1 mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of
2 its isomers, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii), which carries a five-year mandatory
3 minimum term of imprisonment. The strength of the government's case combined with the seriousness
4 of the charge, which includes the mandatory minimum of five years in jail, makes the defendant a flight
5 risk.

6

7 **CONCLUSION**

8 For the foregoing reasons, the Court should grant the government's motion to detain the
9 defendant pending trial.

10 DATED: March 1, 2021

11 Respectfully submitted,

12 STEPHANIE M. HINDS
13 Acting United States Attorney

14 /s/ Benjamin K. Kleinman
15 BENJAMIN K. KLEINMAN
16 Assistant United States Attorney